

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

Chandra Prakash

vs.

State of Rajasthan

D. B. Criminal Jail Appeal No. 1349/03

against the judgment dated 27.11.2003
passed by Additional Sessions Judge, (Fast
Track) No.1, Udaipur, in Sessions Case
No.87/2002.

Date of Judgment

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15.4.2010

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

HON'BLE MR.JUSTICE C.M.TOTLA

Mr. K.R. Bhati, for the appellant.

Mr. KR Bishnoi, PP, for the State.

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BY THE COURT : (PER HON'BLE MATHUR,J.)

By the judgment dated 27.11.2003 learned Additional Sessions Judge (Fast Track) No.1, Uadipur convicted the appellant for the offences punishable under Section 302, 379/34, 323 IPC and 4/25 Indian Arms Act. The accused appellant on conviction as above for offence under Section 302 IPC was sentenced to undergo life term of imprisonment with a fine of Rs. 1000/-, and further to undergo six

months rigorous imprisonment in the event of default in payment of fine. For the offences punishable under Section 379/34 and 323 IPC the accused appellant was sentenced to one year rigorous imprisonment and six months rigorous imprisonment respectively. For the offence punishable under Section 4/25 Indian Arms Act, the appellant was sentenced to undergo one year rigorous imprisonment with a fine of Rs. 1000/- and, further to undergo three months' rigorous imprisonment in the event of default in making payment of fine.

As per prosecution an information was received at police station Bhopalpura from Control Room on 27.2.2002 at 12.45 pm that some quarrel was going on near Gurunanak School and a person has stabbed somebody. On receiving this information police squad reached at the spot of occurrence, where a man was under custody of so many lay persons. The man aforesaid disclosed his name as Chandra Prakash @ Pillu. It came into knowledge of the police squad at the spot that Chandra Prakash @ Pillu stabbed a man namely Raj Kumar @ Raju, who was taken to the hospital. A team of police personnel with Jagaram proceeded for hospital and in the meantime Chandra Prakash was also taken to the Shastri Circle where an another man namely Abdul Salim was caught by Bhanwarlal, a Traffic Constable. Both these persons then were taken to Bhopalpura police station. An oral information then was recorded at the instance of Khemraj Joshi (PW-13) stating therein that

Khemraj, his wife Santosh and son Raj Kumar @ Raju came to the court to attend some case and while returning to home they hired a Vikram Tempo, wherein three young persons too boarded. One from among the three persons picked a sum of Rs.2010/- from the pocket of Khemraj and tried to flee from there. Two persons were caught by Khemraj, however, one among them gave a punch to him and fled from the spot. Another person was under control of Khemraj, and thus, he was handed over to a traffic policeman present there. Name of the person caught by Khemraj was Salim resident of Indore. The other person was chased by Raj Kumar @ Raju and Smt. Santosh. After running some time that man gave a knife blow to Raj Kumar, however, Raj Kumar and Santosh continued chasing and ultimately caught him. The man aforesaid then gave some more knife blows to Raj Kumar, thus, he was taken to the hospital. The assailant was caught by general public and then on reaching the police squad the man aforesaid disclosed his name as Chandra Prakash @ Pillu resident of Kota. During course of treatment Raj Kumar @ Raju died.

On basis of the information aforesaid a case was lodged, investigation was made, the case being exclusively triable by the court of sessions was committed to it and charges were framed against the accused-appellant as well as the co-accused Abdul Salim. The accused appellant was charged for the offences punishable under Section 302,

379/34, 323 IPC and 4/25 Indian Arms Act. Accused Abdul Salim was charged for commission of an offence punishable under Section 302 read with Section 109 IPC. Both the accused persons denied the charges, thus, they were tried. Co-accused Abdul Salim was enlarged on bail during course of trial and while availing that he absconded and as such the court below tried the present accused appellant only while keeping the matter pending against the accused Abdul Salim as prescribed under Section 299 Cr.P.C.

PW-4 Dr. Rahul Jain conducted autopsy on the body of deceased Raj Kumar @ Raju, thus, he proved the postmortem Ex. P/10. As per Ex.P/10 deceased suffered six incised wounds, all received by some sharp edged weapon. The cause of death given was "hemorrhage shock due to injury to left thigh, antemortem in nature and sufficient to cause death in ordinary course of nature." On basis of the medical evidence there is no doubt that the death of Raj Kumar was homicidal one. PW-15 Jagaram Bhadu was the Station House Officer, Police Station - Bhopalpura at the relevant time, thus, he narrated all the steps taken during the course of investigation. As per this witness a blood stained knife was recovered at the instance of accused Chandra Prakash under recovery memo Ex.P/15. The shirt and pant worn by deceased Raj Kumar at the time of incident too were seized and all these articles were sent for serological examination to Forensic Science Laboratory,

Udaipur. The Forensic Science Laboratory report is available on record as Ex.P/21 and as per it the shirt worn by the deceased and the knife recovered at the instance of accused were found to be stained with “B” group of blood.

PW-10 Bhanwar Lal, a traffic constable with Rajasthan Police stated before the court that on 27.4.2002 he was discharging duties at Shastri Circle and at about 12.30-12.35 pm a Vikram Tempo came from Shastri Circle side and turned towards Delhi Gate. The tempo aforesaid was parked in side where from two young persons came down. One old person, a boy and a lady also came down from that tempo and the old man caught hold of the two persons who got down from the tempo at first. One person among those two gave a punch on the face of the old person and then ran away towards Delhi Gate. This witness then rushed to the spot and caught hold of the person who was under control of the old man. This witness further stated that the boy and lady chased the first person and after running some time the first person gave a knife blow to the young boy. This witness further stated that the old man disclosed his name as Khemraj to him and as per Khemraj a sum of Rs. 2010/- was picked out by the two persons and then they tried to run away from the spot.

PW-13 Khemraj, an old man of 68 years, stated that on 27.4.2002,

he went to the court with his son Raj Kumar and wife Santosh and while returning to home he hired a tempo, wherein three other persons also boarded. A sum of Rs.2010/- was picked out from his pocket by a man from among the three persons referred above. This witness further stated that at Shastri Circle he caught hold of two persons and one from them gave a punch on his face and tried to ran away from the spot. His son Raj Kumar and wife Santosh chased him and ultimately the man, whose name was Chandra Prakash gave a knife blow to his son. This witness also stated that the other person held by him was Salim, however, Salim did not say anything to Raj Kumar. At the request of Public Prosecutor this witness was declared hostile.

PW-14 Smt. Santosh, mother of the deceased and wife of PW-13 Khemraj also stated that on 27.2.2002, she alongwith her husband and son Raj Kumar went to the court and while returning to home they boarded on a tempo. Three persons also entered in tempo and one out of them picked out money from pocket of her husband. At Shastri Circle, when the tempo stopped, her husband caught hold of two persons, however, one from them ran away after giving a punch on his face. As per this witness she and deceased Raj Kumar chased the person who tried to ran away from the spot and after running for some time that man gave a knife blow to Raj Kumar. When Raj Kumar tried to caught hold of his hand that man gave few more knife blows.

The accused appellant was put forth for examination as per the provisions of Section 313 Cr.P.C. to explain the circumstances and evidence appearing in prosecution case. The accused denied all the allegations and pleaded his innocence. Learned trial court while relying upon the statements given by PW-10 Bhanwar Lal, PW-14 Smt. Santosh, PW-4 Dr. Rahul Jain, PW-15 Jagaram Bhadu and also upon the scientific evidence held the accused appellant guilty and convicted and sentenced him.

In appeal it is contended by learned counsel for the appellant that even by accepting the prosecution case the offence of the accused-appellant falls under IV exception of Section 300 IPC, thus, the same at the most be an offence punishable under Section 304 Part I IPC.

We have considered the arguments advanced and also scrutinized the entire record. From the statements of eye-witness Smt. Santosh (PW-14) it is quite clear that the accused-appellant at first instance gave one knife blow to deceased Raj Kumar and subsequent thereto few more blows were given by him. The knife blows given were not because of any sudden provocation on the count of deprivation of power of self control by any grave act. As a matter of fact on basis of the available evidence it is adequately established that the accused appellant was otherwise involved in a criminal act and while running from the spot he

stabbed Raj Kumar. The weapon used was already in possession of the accused. As per recovery memo the weapon of offence was having a sharp edged blade of about 18 cms with a handle of about 15 cms. A normal man can very well understand the gravity of giving blows by such a deadly weapon. It is also relevant to note that Dr. Rahul Jain quite categorically stated that the injuries given were at vital parts and he also noted this while giving opinion regarding cause of death in the postmortem report.

In view of the discussion made above, we are of the considered opinion that the case of the accused-appellant in no way come within the exception Clause IV of Section 300, but is an offence of murder. The trial court, therefore, has not committed any wrong while convicting the appellant for the offence punishable under Section 302 IPC. The other offences for which the accused appellant is convicted too have been established on basis of the available evidence beyond shadow of reasonable doubt.

Accordingly, the appeal is having no merit. The same therefore, is dismissed.

(C.M.TOTLA),J.

(GOVIND MATHUR),J.